BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

YOUR SNOQUALMIE VALLEY, DAVE EIFFERT, WARREN ROSE, and ERIN ERICSON,

Petitioners,

v.

CITY OF SNOQUALMIE

Respondent,

and,

SNOQUALMIE MILL VENTURES, LLC and ULTIMATE RALLY, LLC,

Intervenors.

CASE NO. 11-3-0012

ORDER ON MOTIONS

THIS Matter came before the Board on Respondent's dispositive motions and Petitioners' motions to supplement the record. Petitioners oppose the City's actions related to proposed annexation of a portion of its associated UGA known as the Mill Planning Area. Snoqualmie Mill Ventures, LLC (SMV) and Weyerhaeuser Real Estate Development Company (WREDCo) are the property owners of the potential annexation area, a former Weyerhaeuser lumber mill. SMV leases a substantial portion of its property to Ultimate Rally, LLC dba DirtFish Rally School (DirtFish), which operates a specialized rally car driving instructional school. The property is also used for special events.

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The annexation was proposed by King County in January, 2011.[1] In March, 2011, the Snoqualmie City Council authorized negotiations with King County for annexation by interlocal agreement.[2] The City then undertook four actions:[3]

- Zoning to become effective upon annexation [Pre-Annexation Zoning] adopted as Ordinance 1086 on October 24, 2011
- Approval of a Pre-Annexation Agreement with SMV, WREDCo, and DirtFish, adopted by Resolution 1115, October 24, 2011
- Interlocal Agreement for annexation, adopted by the City November 28, 2011, and still pending before King County Council
- Annexation Ordinance – not yet introduced

In this matter, Petitioners challenge the City's adoption of Ordinance 1086, adopting Pre-Annexation Zoning, and Resolution 1115, authorizing the Mayor of Snoqualmie to enter into a Pre-Annexation Agreement with the property owners and DirtFish.

RESPONDENT'S MOTIONS TO DISMISS

The City of Snoqualmie moves to dismiss the Petition for Review for untimely and improper service in violation of WAC 242-03-230. Alternatively, the City moves for dismissal of the challenge to Resolution 1115 on the grounds that the Pre-Annexation Agreement approved in the resolution is not within the Board's jurisdiction under RCW 36.70A.280(1).[4]

Petitioners responded, arguing substantial compliance with the service requirement. Petitioners also asserted Resolution 1115 is a *de facto* amendment to the City's Comprehensive Plan and development regulations, within the Board's jurisdiction.[5]

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[1] Declaration of [Mayor] Matthew Larson in Support of City of Snoqualmie's Dispositive Motion (Feb. 9, 2012), at 2.
[2] Resolution 992, March 20, 2011
[3] Summarized in City of Snoqualmie's Response to Motion for Leave to File Supplemental Evidence, at 6
[4] City of Snoqualmie's Dispositive Motions (Feb.9, 2012). Intervenors on the same date filed Intervenors' Joinder in City's Dispositive Motions.
[5] Petitioners' Response to City of Snoqualmie's Dispositive Motions (Feb.21, 2012)

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For the reasons set forth below, the Board declines to dismiss for deficiencies in service. The Board also concludes Resolution 1115 is a *de facto* comprehensive plan amendment as to which it has jurisdiction, but the Resolution is not a *de facto* amendment of the City's development regulations.

DEFECTS OF SERVICE

The GMA contains no express language requiring service of a PFR on any respondent. The GMA does, however, require the Board to adopt "rules regarding expeditious and summary disposition of appeals."[6] The requirement for the Petitioner to promptly serve the PFR on the respondent city, county or state agency has therefore been a part of the Board's Rules of Practice and Procedure from their first promulgation.[7] Disposition of cases will not be "expeditious" if service requirements are disregarded.

The Board's Rules of Practice and Procedure, WAC 242-03-230, contain the following provisions concerning service of the PFR:[8]

> (2)(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or before the date filed with the board. Service of the petition for review may be by mail or personal service, so long as the petition is received by respondent on or before the date filed with the board.
>
> (b)…When a city is the respondent, the mayor, city manager, or city clerk shall be served….
>
> (4) The board may dismiss a case for failure to substantially comply with this section.

[6] RCW 36.70A.270(7).
[7] WAC 242-03-230(2), formerly WAC 242-02-230(1)
[8] WAC 242-03-230(2)

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The City asserts service of the PFR was fatally defective. The City points out the PFR was filed with the Board on December 23, 2011, but not received by the City until December 28, 2011 when it was delivered to a City Hall receptionist by FedEx courier. The City argues:

> The Petition for Review was filed on December 23, 2011, and no effort at service was made until December 27, 2011, four days after filing. The Petition for Review was not received by the Respondent City until December 28, 2011, five days after filing. … No effort at service compliant with the requirements of WAC 242-03-230 has yet been made…[9]

In response, Petitioners provide affidavits indicating

- personal service on the Mayor or City Clerk was attempted on December 23 at 2:17 p.m. but City Hall was closed;[10]
- personal service was attempted December 27 at 11:09 a.m. but neither the Mayor nor City Clerk was in the office that day;[11]
- the PFR was sent by FedEx overnight delivery December 27 addressed to the Mayor and delivered to a front desk receptionist December 28 at 1:21 p.m.[12]

The Board notes Christmas Day fell on a Sunday. Snoqualmie City Hall took Monday, December 26 as an official holiday, posting the closure on its website calendar.[13] However, without public announcement, City Hall closed its doors after 1:30 December 23, the Friday before the holiday weekend.[14] And in the days following Christmas, the Mayor and other city hall employees did not keep regular hours.

The City contends Petitioners could have made less-risky choices and their failure to effect timely service was therefore "of their own making."[15] According to the City, Petitioners chose to file the PFR on December 23 instead of December 27, which was the statutory deadline,

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[9] Motion at 13
[10] Declaration of Julie Ainsworth-Taylor (Feb. 21, 2012), Ex. A and B
[11] Ainsworth-Taylor Declaration, Ex. D
[12] Ainsworth-Taylor Declaration, Ex. E and F
[13] Ainsworth-Taylor Declaration, Ex.C
[14] City of Snoqualmie's Reply re Dispositive Motions (Feb. 28, 2012), at 6, fn. 3
[15] City's Reply, at 5

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and opted to attempt personal service on Respondent instead of putting the PFR in the US Mail. Thus, the City argues, Petitioners' failure to strictly comply with the Board's service rules is grounds for dismissal.

WAC 242-03-230(4) provides:

> The board may dismiss a case for failure to substantially comply with this section.

The test for "substantial compliance" used by the federal courts to evaluate sufficiency of service upon local governments, while not directly applicable, is instructive. Failure to strictly comply with Rule 4 of the Federal Rules of Civil Procedure does not require dismissal of the complaint if the plaintiff satisfies four requirements: "(a) the party that had to be served personally had actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff would be severely prejudiced if his complaint were dismissed." *S.J. v Issaquah School District* No. 411, US District Court, Western District of Washington at Seattle (March 8, 2007), citing *Borzeka v. Heckler*, 739 F.2d 444, 447 (9th Cir. 1984).

In *Continental Sports Corp. v Department of Labor and Industries (DLI)*,[16] our Supreme Court reviewed a decision of the Board of Industrial Insurance Appeals which dismissed an appeal filed by FedEx delivery and received a day after the last day to appeal. Construing the DLI service requirement in RCW 51.48.131, the Court ruled that delivery by FedEx did not satisfy the statutory requirement for service "by mail." But the Court continued:

> Although we conclude the postal matter delivered by Federal Express is not mail,… we must still decide whether Continental … substantially complied with the provisions of RCW 51.48.131 when it employed Federal Express to deliver its notice of appeal.

The Court noted the FedEx receipt sent to the DLI indicated the date the notice of appeal was deposited with the carrier, which was the last date for filing an appeal. The Court

[16] 128 Wn.2d 594, 602-604, 910 P.2d 1284 (1996)

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concluded DLI "was in as good a position as it would have been had the notice of appeal been sent to the Board 'by mail'." On these facts, the Court ruled the appellant *substantially complied* with the service requirements.

On the record before us, the Board finds Petitioners' reasonable and diligent effort to effect personal service on the day they filed their PFR with the Board was frustrated by the unannounced early pre-Christmas closure of City Hall. There was a justifiable excuse for failure to serve properly.[17] When a second attempt at personal service on the next business day – December 27 - was thwarted by the post-Christmas absence of the Mayor and City Clerk, Petitioners reasonably effected service by FedEx next-day delivery. The Board notes the City acknowledges it was previously notified of Petitioner's intent to file a GMA challenge[18] and the City cannot reasonably claim to have been prejudiced by the technical defect of delivery by FedEx.

Conclusion Re: Service

The Board finds and concludes Petitioners' failure of strict compliance with the service requirements of WAC 242-03-230(2) was occasioned by the unscheduled closure of City Hall. By diligent and prompt efforts to complete service, Petitioners substantially complied with the Board's service rules. The motion to dismiss for insufficiency of service is **denied.**

JURISDICTION TO REVIEW RESOLUTION 1115

- Resolution 1115 – Pre-Annexation Agreement

Resolution 1115 authorizes the Mayor to enter into a Pre-Annexation Agreement with SMV, WREDCo and DirtFish. The Agreement spells out a number of conditions and mitigations for continued operation of the uses on the property, including the DirtFish rally school, special events run by SMV, and a wood recycling business operated as Northfork Enterprises. The

[17] While not reaching the City's hypothetical of "getting hit by a bus on the way to the post office" (City's Reply, at 8), the obstacle was of the City's making, not a result of Petitioners' misjudgment.22

[18] The City states Your Snoqualmie Valley announced on November 14, 2011, in a Land Use Petition (LUPA) filed in King County Superior Court, that it intended to file a PFR with the Growth Board. City Reply at 5.

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requirement for an annexation implementation plan is deferred, and the City commits to future consideration of shoreline designations and unspecified code amendments.

The City, joined by Intervenors, contends Resolution 1115 is a development agreement that is not subject to the Board's jurisdiction. The City moves to dismiss the challenge to the Resolution. Petitioners contend Resolution 1115 is a *de facto* amendment of the City's comprehensive plan annexation policies and a *de facto* amendment of City development regulations for which the Board has jurisdiction.[19]

- Applicable Law

The Legislature has defined a limited jurisdiction for the Growth Board. RCW 36.70A.280(1) provides, in pertinent part: "The growth management hearings board shall hear and determine only those petitions alleging" that "a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter [GMA] . . . or chapter 43.21C RCW [SEPA] as it relates to plans, development regulations, or amendments."

Under RCW 36.70A.290(1), the Board hears "[a]ll petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto is in compliance with the goals and requirements of [the GMA, SEPA, or SMA]."

"Comprehensive Plan" or "Plan" is defined in the GMA, RCW 36.70A.030(4):

> **"Comprehensive land use plan," "comprehensive plan," or "plan"** means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

A comprehensive plan consists of a future land use map, planning elements, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.[20] The comprehensive plan itself does not directly regulate site-specific

[19] See Legal Issues 2 and 4

[20] RCW 36.70A.070.

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land use decisions. Rather, it is development regulations which directly control the development and use of the land. Such regulations must be consistent with the comprehensive plan and be sufficient in scope to carry out the goals set forth in the comprehensive plan. [21]

Development regulations are defined in the GMA, RCW 36.70A.030(7):

> "**Development regulations**" or "**regulation**" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto…. [22]

Thus, the jurisdiction of the GMHB is statutorily established by RCW 36.70A.280(1) and .290(1).[23] The GMHB has jurisdiction to hear appeals of local decisions adopting or amending comprehensive plans, including subarea plans, and adopting or amending development regulations, including area-wide rezones.

In this statutory framework, the courts have long recognized the GMHB lacks jurisdiction to hear challenges to development agreements.[24] Development agreements are individual agreements between cities and property owners regarding the development, use, and mitigation of the development of a specific property. Development agreements are authorized by RCW 36.70B.170, which expressly provides for development agreements outside the city limits:

> A city may enter in to a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement.[25]

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[21] *Woods v. Kittitas County,* 162 Wn.2d 597, 613 (2007)*;* RCW 36.70A.040 (Development regulations must implement comprehensive plan).
[22] See also, WAC 365-196-800 ("Development regulations under the [GMA] are specific controls placed on development or land use activities by a county or city.")
[23] This is reinforced by the exclusions from the LUPA process in RCW 36.70C.020, RCW 36.70C.030, and RCW 36.70B.020(4).
[24] *Citizens for Mount Vernon v City of Mount Vernon*, 133 Wash. 2d 861, 947 P.2d 1208 (1997); *City of Burien v CGMHB,* 113 Wash.App. 376, 53 P.3d 1028 (2002).
[25] RCW 36.70B.170(1), also providing that in GMA cities a development agreement must be consistent with the city's adopted development regulations.

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Only if a development agreement constitutes a *de facto* amendment to a comprehensive plan or development regulation is it within the Board's jurisdiction for review.

In *Alexanderson v Board of Clark County Commissioners*, 135 Wash.App. 541, 144 P.3d 1219 (2006) the Court of Appeals ruled that a Memorandum of Understanding between Clark County and the Cowlitz Tribe for provision of water service to a proposed development was a *de facto* amendment to the County's comprehensive plan policy prohibiting such water service. The Court reversed the Board's dismissal for lack of jurisdiction and remanded for Board decision on the merits. In light of *Alexanderson*, the Board must address the jurisdictional question independent of the caption of the City's action.

- *De Facto* Amendment of Comprehensive Plan

Snoqualmie Comprehensive Plan Chapter 8 contains the City's annexation policies, including general annexation policies and policies specific to each of the City's four annexation planning areas. At issue here, Policy Objective 8.B.2 provides:

> Maintain effective control over growth and development within the urban growth area and encourage consistency with comprehensive plan goals and policies by requiring more specific area planning prior to annexation.

Policy 8.B.2.1 requires:

> *Require the preparation*, whether by the City or property owner, *of an annexation implementation plan* for the entire applicable planning area *prior to annexation* of any individual property to the City. *The annexation implementation plan shall be reviewed and approved by the City prior to approval of an annexation*. Ensure annexation of individual properties conform substantially to the policies of the annexation implementation plan. Require the preparation of a pre-annexation zoning regulation pursuant to the provisions of RCW 35A.14.330 and .340.

The annexation implementation plan must indicate proposed land uses, primary road networks, and utility systems,[26] include a sensitive areas study,[27] buffer rural and resource

[26] Policy 8.B.2.3

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lands,[28] and protect the 100-year floodplain.[29] Policies specific to the Mill Planning Area, which includes the property at issue here, spell out additional requirements for this area's annexation implementation plan, including removal of fill in the floodway, soil contamination testing, buffering of neighboring residences from the gravel quarry and waste water treatment operations, upgrading Meadowbrook Bridge, and provision of trail right-of-way. [30]

Resolution 1115 expressly defers the requirement of an annexation implementation plan until development or redevelopment of the Mill Planning Area is proposed. The Pre-Annexation Agreement authorized by the Resolution states:[31]

> **Comprehensive Plan Policies**. The Snoqualmie Vicinity Comprehensive Plan contains both general annexation policies and policies specific to annexation of the Mill Planning Area, which includes the Annexation Area. The City will *defer applying the comprehensive plan annexation policies*:
> 4.1. To the WREDCO Property until development or redevelopment of the WREDCO Property is proposed.
> 4.2. To the SMV Property until development or redevelopment is proposed on the SMV Property….

Petitioners contend the Pre-Annexation Agreement amends the Comprehensive Plan by *deferring* the requirement of an annexation implementation plan for this particular area despite the Policy 8.B.2.1 mandate requiring the preparation, review and approval of an annexation implementation plan *prior to approval* of an annexation.

The City argues the Pre-Annexation Agreement does not ignore or abandon application of the annexation policies but simply defers them until actual development is proposed.[32] The City asserts:

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[27] Policy 8.B.2.9
[28] Policy 8.B.2.8
[29] Policy 8.B.4
[30] Policies 8.C.3.1 to 8.C.3.13
[31] Resolution 1115, A.4, emphasis added
[32] See Resolution 1115, A.6: The City will not approve any new or additional site development until review of applicable Comprehensive Plan policies, approval of an Annexation Implementation Plan, and for any development within the PCI zone, a Planned Commercial Industrial Plan, and for any development in the PR

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- This proposed annexation was initiated at the request of King County to change the jurisdiction having land use control over the property. No change of use, new development or redevelopment is proposed or approved, and so analysis would be pre-mature.[33]
- The Pre-Annexation Agreement simply applies the City's existing zoning to the existing uses on the property. Transportation, water, and sewer service are already available for these uses.[34]
- Many of the specifics called out in the annexation policies have already been resolved, such as renovation of Meadowbrook Bridge,[35] agreement on flood control measures,[36] and soil contamination studies and remediation agreements.[37]
- Other annexation policy requirements are incorporated in the Pre-Annexation Agreement, including the sensitive areas study[38] and commitments to dedicate trail right-of-way.[39]

Under the circumstances, the City says, where jurisdiction over existing uses is simply being transferred from county to city and no new development has been proposed, requiring an annexation implementation plan at this time would be a wasted exercise; thus deferral was a reasoned exercise of the City's discretion.

The Board only reaches the question of the City's discretion if the Pre-Annexation Agreement is a *de facto* amendment of the comprehensive plan which the Board has

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zone a Planned Residential Plan, and associated environmental review under the State Environmental Policy Act have been completed.

[33] Policy 8.B.2.3 indicates the intention of an annexation implementation plan is to provide "the general policy guide for *development* of any property proposed for annexation."

[34] Resolution 1115, B.5; see also Ex. F. to City Motions, Staff Report, at 8.B.1.2. comment b

[35] Ex. F at 8.C.3.10

[36] Ex. F at 8.C.3.3 and 8.C.3.8

[37] Ex. F at 8.C.3.7

[38] Resolution 1115, B.4 and Ex. F at 8.B.2.9

[39] Ex. F at 8.C.3.12 and Resolution 1115, A.11 and A.14

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jurisdiction to review. The Board looks to the Court's analysis in *Alexanderson* to determine whether there was a *de facto* plan amendment. The *Alexanderson* Court stated:

- [The memorandum] requires the County to act inconsistently with planning policies.[40]
- Although the language of [the memorandum] does not explicitly amend [a goal] of the County's comprehensive plan, it has the actual effect of doing so.[41]
- Because the MOU has the legal effect of amending the plan, just as if the words of the plan itself had been changed to mirror the MOU, the MOU was a *de facto* amendment and the Board has jurisdiction. [42]
- [Because] the MOU directly conflicts with the comprehensive plan and will override [a] Goal … of the comprehensive plan … the MOU is not a development agreement. We hold that the MOU is a *de facto* amendment to the comprehensive plan within the Board's jurisdiction and not a development agreement outside the Board's jurisdiction.[43]

In the case before us, the Board finds a direct conflict between the City's comprehensive plan annexation policies – requiring an annexation implementation plan prior to approval of a proposed annexation – and the Resolution 1115 agreement to annex first and "defer applying the comprehensive plan annexation policies." The Board notes again the mandatory language of Policy 8.B.2.1:

> *Require* the preparation … of an annexation implementation plan …*prior to* annexation …. The annexation implementation plan *shall be* reviewed and approved by the City *prior to* approval of an annexation. [44]

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[40] *Alexanderson*, at 548-49
[41] *Alexanderson*, at 549
[42] *Alexanderson*, at 550
[43] *Id.*
[44] Policies 8.B.2.10 and 11 allow consideration of exceptions in two circumstances, neither of which is applicable here: for "public health and safety" to provide necessary public services to a property, and for location of City facilities or utilities.

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Resolution 1115 effectively amends the requirement of Policy 8.B.2.1 and related provisions as applied to the Mill Planning Area. An exception for the Mill Planning Area, which could have been allowed through a comprehensive plan amendment, is instead granted in a Pre-Annexation Agreement. Under the reasoning in *Alexanderson,* the Pre-Annexation Agreement is a *de facto* amendment to the comprehensive plan within the Board's jurisdiction and not a development agreement outside the Board's jurisdiction.[45]

The Board concludes Resolution 1115 is a *de facto* amendment of the Snoqualmie Comprehensive Plan annexation policies insofar as it defers preparation of an annexation implementation plan which the policies require to be approved prior to annexation. As such, Resolution 1115 is within the Board's jurisdiction to review.[46] The City's motion to dismiss for lack of jurisdiction on this basis is denied.

- *De Facto* Amendment of Development Regulations

The City moves to dismiss the challenge to Resolution 1115 on the grounds the Pre-Annexation Agreement is not a development regulation or amendment and thus not within the Board's jurisdiction.

Petitioners' characterization of Resolution 1115 as an amendment of the City's development regulations is the basis for Legal Issue 4 of the PFR, which alleges the Pre-Annexation Agreement "sets forth controls on land." Petitioners assert the Resolution guarantees the City will amend its code provisions to assure continued use of the property for the DirtFish rally school and special events; thus the Resolution is a *de facto* amendment of regulations, according to Petitioners.[47]

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[45] *Id.*
[46] Some of the City's arguments, though not persuasive on the question of jurisdiction, may be relevant to the question of GMA compliance or to a future amendment of the plan policies.
[47] Petitioners also assert the City's recognition of DirtFish as a conforming use in Resolution 1115, B.1 is an amendment of City Code provisions, but supporting facts and analysis are not provided.

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The Board finds Resolution 1115 largely applies the City's existing zoning code designations to the comparable lands in the Mill Planning Area (Section A.2).[48] Other sections of the Pre-Annexation Agreement commit the City to "commence the process" for consideration of shoreline designations (A.3), to "present amendments" to the code's allowable use tables to the Planning Commission and City Council "for their consideration" (A.7), and to "present amendments" to the temporary use permits code provisions (A.8).

Petitioners contend these provisions pre-judge the outcome and constitute *de facto* code amendments that "set forth controls on land." The Board is not persuaded. The proposed shoreline designations are not controls on land; they still must go through the City's process and Department of Ecology review and approval. The possible code amendments are not even specified; they cannot possibly be considered controls on land. The Board will not assume the City acts in bad faith when it commits to considering or undertaking a process for review of planning actions.[49] Petitioners will have opportunities to comment in the shoreline designation process as well as on any City code revisions, and the Pre-Annexation does not dictate a particular legislative result.

Board concludes Resolution 1115 is not a *de facto* amendment to the City's development regulations; the City's motion to dismiss that aspect of Petitioners' challenge is granted and Legal Issue 4 is **dismissed.**

Conclusion Re: Jurisdiction

The City's motion to dismiss Petitioners' challenge to Resolution 1115 for lack of jurisdiction is denied in part and granted in part. The Board finds Resolution 1115, by deferring

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[48] The Pre-Annexation Zoning is adopted in Ordinance 1086 and is within the Board's acknowledged jurisdiction.

[49] The Board assumes good faith on the part of the City. See, *Petso v City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order, (Aug. 17, 2009) at 32; *Fallgatter V. v City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 21; *Central Puget Sound Regional Transit Agency v. City of Tukwila*, CPSGMHB Case No. 99-3-0003, Final Decision and Order (Sep. 15, 1999), at 7; *Pilchuck v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 38.

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application of the City's annexation policies – specifically, the requirement of an annexation implementation plan – is a *de facto* amendment to Chapter 8 of the City's Comprehensive Plan. The Board concludes it has subject matter jurisdiction to review Resolution 1115 on this basis.

The Board finds and concludes Resolution 1115 is not a *de facto* amendment to the City's development regulations. The City's motion to dismiss as to that issue is granted. Legal Issue 4 is **dismissed**. The scope of the Board's review of Resolution 1115 in Legal Issues 5 and 6 will be limited to comprehensive plan issues.

PETITIONERS' MOTIONS FOR LEAVE TO SUPPLEMENT THE RECORD

Petitioners filed two motions for leave for additional time to request supplementation of the record, only one of which is still at issue.[50] Petitioners' remaining motion asks for additional time to file motions to supplement the record if Petitioners find relevant documents in response to public disclosure requests.[51] The requests, directed to King County and the City of Snoqualmie, ask for:

> Any and all public records, including but not limited to documents, emails, letters, memorandum between the City of Snoqualmie and King County – all departments (Staff, City Council, Mayor, County Council, County Executive) related to the proposed annexation of the Weyerhaeuser Mill Site.

Petitioners indicate they have received "no records from King County, and Snoqualmie's response has not been fully responsive."[52] Petitioners want the opportunity to move for supplementation if disclosed records are relevant to the matter before the Board.

The City and Intervenors object on several grounds:

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[50] The Second Motion for Leave to File Supplemental Evidence (Feb.9, 2012), concerned records of certain City Council and Planning Commission Meetings not included in the City's Index. An Amended Index has now been filed by the City and the matter is resolved. Petitioners' Reply to Motion for Leave (Feb. 27, 2012).
[51] Motion for Leave to File Supplemental Evidence (Feb. 8, 2012).
[52] Petitioners' Reply, at 3

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- No documents are attached to the motion and there is no statement of why such evidence would be necessary or of substantial assistance to the Board, as required by WAC 242-03-565.
- The material sought in the Petitioners' record requests is irrelevant, because the Board does not have jurisdiction over annexations or over interlocal agreements.
- The Board's rules specify the Index and record evidence should consist of material used by the city "in taking the action that is the subject of review."[53] The subject of review in this case is not the Interlocal Agreement or annexation, but only Ordinance 1086 and Resolution 1115.
- Finally, some of the documents responsive to the requests post-date the adoption of the Ordinance 1086 and Resolution 1115.

The Board notes it has no authority over the public records request process. Parties to Board proceedings who request documents under the Public Disclosure Act do so for their own purposes, which may be broader than the action before the Board. However, if the disclosure provides information that is necessary or of substantial assistance to the Board's decision, a motion to supplement is appropriate.

The Board grants the Petitioners additional time to review the disclosures and determine whether to move to supplement the record, as follows:

- A motion to supplement the record may be filed with the Petitioners' prehearing brief.
- The requested document[s] shall be attached to the motion.
- The motion shall clearly state why the document is necessary or of substantial assistance to the Board in reaching its decision concerning (a) Ordinance 1086 or (b) Resolution 1115. The Board is not reviewing the Interlocal Agreement or annexation.
- Material post-dating the adoption of Ordinance 1086 and Resolution 1115 will not be considered.

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[53] WAC 242-03-510(10 and WAC 242-03-565

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- The City and/or Intervenors may respond to the motion when they file their responsive briefs on the merits. The Board will rule on the motion at the outset of the Hearing on the Merits.

Conclusion on Supplementation

Petitioners' motion for leave for additional time to file supplementation is **granted** on the conditions indicated above.

ORDER

Based upon review of the Petition for Review, the motions and briefs submitted by the parties, the GMA, prior Board Orders and case law, having deliberated on the matter the Board ORDERS:

1. Respondent's motion to dismiss for failure to serve the PFR is **denied.**
2. Respondent's motion to dismiss Petitioners' challenge to Resolution 1115 for lack of jurisdiction is **granted in part and denied in part**.
   (a) The Board concludes Resolution 1115 is a *de facto* amendment of the City's Comprehensive Plan which the Board has jurisdiction to review. Respondent's motion to dismiss as to that issue is denied.
   (b) The Board concludes Resolution 1115 is not an amendment or *de facto* amendment of the City's development regulations. Respondent's motion to dismiss as to that issue is granted. Legal Issue 4 is dismissed.

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3. Petitioners' motion for leave for additional time to file a motion for supplementation is **granted** on the conditions indicated above.

Dated this 8th day of March, 2012.

_____
William P. Roehl, Board Member

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Margaret A. Pageler, Board Member

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Joyce Mulliken, Board Member

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